

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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UNITED STATES) Cr. No. 04-10195-PBS
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v.)
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)
MICHAEL PINA)
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)**MOTION IN LIMINE TO EXCLUDE EVIDENCE
OF MR.PINA'S PRIOR INCARCERATION**

The Defendant, Michael Pina, hereby moves the Court to exclude from admission into evidence testimony of David Pellott/Velasquez, one of the government's witnesses, that he first met Mr. Pina while they were both incarcerated. The Court should exclude the evidence as its probative value is significantly outweighed by the potential prejudice, to wit that Mr. Pina has been previously incarcerated and therefore he has shown the propensity to commit criminal acts. Testimony concerning Mr. Pina's prior incarceration for unrelated matters constitutes classic prohibited Fed. R. Evid. 404(b) evidence, in other words, evidence introduced to show that he is a bad actor, and that he acted in conformity therewith by committing the crimes for which he is currently charged. Where the evidence proffered is of such scant (if any) probative value to the issue before the jury, and the potential prejudice to the defendant is so serious, the Court should exercise its discretion and order said evidence excluded. The balancing test required by Fed.R.Evid. 403, militates in favor of its exclusion. Fed.R.Evid. 403 states:

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence”

The prejudice to Mr. Pina said evidence would cause clearly outweighs any probative value it might have, and as such should be excluded.

For the foregoing reasons, the defendant prays the Court allow this motion.

Respectfully Submitted,
Michael Pina
By his attorney

/s/ Michael C. Andrews

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